83-502

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

No.

FIELD COMMUNICATIONS CORPORATION and
LLOYD GEORGE PARRY,
Petitioners

v.

THE HONORABLE JOSEPH P. BRAIG,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

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QUESTIONS PRESENTED FOR REVIEW

1. Is a broadcaster which accurately and impartially transmits the comments of one public official about another public official's performance of his official duties entitled under the First Amendment to protection from exposure to liability in a libel action?

2. Is the First Amendment privilege, which protects expressions of opinion concerning the performance in office of a public official, subject to exceptions for (a) comments concerning the alleged bias of a Judge and (b) comments (labeled as the speaker's opinion) critical of the Judge's decision, so that such comments may be subject to jury determinations of their truth or falsity, i.e., jury determinations of whether the Judge was biased and whether his judicial decision was correct or erroneous?

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Petitioners, Field Communications Corporation and Lloyd George Parry, respectfully pray that a writ of certiorari issue to review the judgment of the Superior Court of Pennsylvania entered in this proceeding on January 14, 1983.[1]

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1. Pursuant to Sup. Ct. R. 28.1, Petitioner Field Communications Corporation hereby discloses that it is a wholly-owned subsidiary of Field Enterprises, Inc., a privately held corporation.

REFERENCE TO OPINIONS BELOW

The Opinion of the Court of Common Pleas of Philadelphia County, which is not reported, is set forth in the Appendix.

The Opinion of the Superior Court of Pennsylvania and the concurring and dissenting statement, reported at 456 A.2d 1366 (Pa.Super. 1983), are set forth in the Appendix. The Order of the Superior Court denying reargument also is set forth in the Appendix.

Copies of the Orders of the Pennsylvania Supreme Court, denying the Petitions of Field Communications Corporation and Lloyd George Parry for Allowance of Appeal, are set forth in the Appendix.

STATEMENT OF GROUNDS FOR JURISDICTION

The judgment of the Superior Court of Pennsylvania was entered on January 14, 1983. Timely Petitions for Reargument, filed by Petitioners Field Communications Corporation and Lloyd George Parry, were denied on March 29, 1983. Thereafter, Petitioners Field Communications Corporation and Lloyd George Parry filed timely Petitions for Allowance of Appeal with the Supreme Court of Pennsylvania, which petitions were denied by Orders entered June 24, 1983. This Petition is filed within ninety (90) days of that date pursuant to 28 U.S.C. §2101(c).

The Court has jurisdiction to review the judgment of the Superior Court of Pennsylvania by writ of certiorari pursuant to the provisions of 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISION INVOLVED

First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

STATEMENT OF THE CASE

During 1979, the trials of two police officers on charges arising from the fatal shooting of a 19-year-old Philadelphia resident, Cornell Warren, attracted significant public debate and controversy. While in custody following a traffic violation, and while wearing handcuffs behind his back, Warren ran from the two officers while being escorted from a police wagon into the Police Administration Building. Both officers ran after Warren and two shots were fired. Officer Daryl Bronzeill fired one shot, leaving a bullet mark on an adjacent building at approximately the height of Warren's head. Officer Thomas Bowe caught up with Warren, was observed to strike him twice, and, while Warren was lying on the ground, Officer Bowe's gun fired once, hitting Warren in the head and killing him.

Both officers were charged with criminal offenses. Both cases were prosecuted by Robert Campolongo, an Assistant District Attorney who served in the Police Misconduct Unit of the Philadelphia District Attorney's Office under the supervision of Petitioner Lloyd George Parry.

Respondent Honorable Joseph P. Braig, a Judge of the Court of Common Pleas of Philadelphia County, presided at the trial of Officer Bronzeill. The trial was terminated when Respondent, on his own motion, declared a mistrial on the ground that the prosecutor had com-

mitted misconduct. Subsequently, Officer Bowe was acquitted by a jury in a trial before another Judge of the Court of Common Pleas.

After Officer Bowe's acquittal, a public affairs program entitled "On Target: The Bowe Case" was presented on WKBS-TV, a Philadelphia television station owned by Petitioner Field Communications Corporation (hereafter "Field"). The "On Target" program, which had been presented by WKBS-TV for a number of years, was designed to provide a forum for serious discussion by knowledgeable panelists of minority affairs matters of current public interest. The 30-minute program was moderated by Brahin Ahmaddiya, who had attended and reported on the Bowe trial. The panelists on the program were Petitioner Parry, Chief of the Police Misconduct Unit of the Philadelphia County District Attorney's Office, and A. Benjamin Johnson, a well-known Philadelphia criminal defense attorney who had represented Cornell Warren's family.

The program was videotaped on September 10, 1979 at the WKBS-TV studio in Philadelphia. As the title of the program suggests, most of the discussion among the three participants centered upon the prosecution of Officer Bowe. As the panelists' commentary about the case developed, Johnson was critical of the prosecutorial style of Campolongo, the assistant district attorney who had handled the prosecutions of Bronzeill and Bowe, and was particularly critical of the decision to have Campolongo prosecute the Bowe case after Judge Braig had granted a mistrial in the Bronzeill case because of Campolongo's prosecutorial misconduct. To underscore this point, Johnson quoted a statement critical of Campolongo which had been made by Judge Braig during the Bronzeill trial. The following colloquy then occurred:

> PARRY: I was going to say that if you want to use Judge Braig's statement, you know, you are opening up a whole other area. In fact, it was a whole other

case in terms of the presentation that was made to the court. Judge Braig is no friend of the police brutality unit. I don't care who we sent in to try that case, in my opinion, that case was going to get blown out.

AHMADDIYA: Okay, we have to ask this question —

JOHNSON: This is the second time, no matter which judge they have, they accuse the judge of blowing the case out.

PARRY: Judge Geisz didn't blow the case out.

The videotaped program was broadcast as scheduled on September 23, 1979. A day or two later Judge Braig telephoned Kenneth T. MacDonald, Vice President and General Manager of WKBS-TV. Judge Braig stated that he had been told that an objectionable reference to him had been made on the "On Target" program which had aired the previous Sunday. MacDonald said he found that surprising, because he was certain that the program's producer-director would not allow objectionable material to air. He offered to view the program tape and call the Respondent the next day.

After viewing the cassette tape, MacDonald spoke to Respondent and said he had found nothing objectionable on the tape. He then said he would have the tape cassette of the program hand-delivered so that Judge Braig could view it on equipment which MacDonald was aware was available to the Court. MacDonald told Judge Braig to call back if, after viewing the tape, he found any reference to himself to be objectionable. MacDonald also told Respondent the scheduled rebroadcast date of the program. Although MacDonald instructed his staff to have the cassette hand-delivered, the tape inadvertently was mailed to Respondent, who claimed to have received the tape after the rebroadcast.

The "On Target" program was rebroadcast on September 29, 1979. At no time subsequent to the telephone

call just described did Judge Braig contact MacDonald. Neither Respondent nor anyone representing him ever requested a retraction of, or an opportunity to respond to, statements made by Petitioner Parry on the program. The first notification Petitioner Field received that Judge Braig, after having an opportunity to view the program, objected to any reference to him occurred when the Complaint in this case was served, nearly six months after the broadcasts.

The federal constitutional issues which are the subject of this Petition were raised in the Petitioners' answers to the Complaint as well as in each subsequent stage of these proceedings. The trial court, on a record which included six depositions and eight affidavits, granted Petitioners' motions for Summary Judgment, ruling that Petitioner Parry's comments were constitutionally protected expressions of opinion; that Petitioner Field's broadcast was privileged because made in a proper case, from a proper motive, in a proper manner based upon reasonable or proper cause; and that as a matter of law Respondent's evidence failed to create a jury question on the issue of whether either Petitioner acted with actual malice.

A panel of the Superior Court of Pennsylvania reversed the Summary Judgments granted by the trial court. The Superior Court ruled that Petitioner Parry's comments were not constitutionally protected expressions of opinion and that a jury question of actual malice was presented as to Petitioner Parry's remarks and as to Petitioner Field's rebroadcast of the program. One judge dissented from the reversal of summary judgment as to Petitioner Field, stating that it "was merely the conduit of the information, and . . . there was no showing of malice attributable to Field in its capacity as a disseminator of information to the public. . . . " (Concurring and Dissenting Statement by Popovich, J.).

Both Petitioners sought reargument before the Su-

perior Court, which petitions were denied, as were the petitions of both for Allowance of Appeal to the Supreme Court of Pennsylvania.

REASONS FOR GRANTING THE WRIT

1. The Accurate and Impartial Transmission of the Comments of One Public Official about Another Is Entitled to Constitutional Protection

The majority opinion of the Pennsylvania Superior Court raises at least one important and fundamental federal question which should be resolved by this Court. Resolution of that issue will have a direct impact on the media's ability to fulfill their historical role as providers to the public of important information about the operation of government and elected public officials.

This Court has not yet considered the principle, advanced by Field in this case, that no liability can be imposed upon a publisher or broadcaster for the accurate and impartial transmission of statements made by one public official about the performance of official duties by another public official.[2]

A constitutional privilege for such disinterested, accurate republications should be adopted as the logical and compelled result under this Court's line of First Amendment decisions beginning with the landmark

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2. Federal Courts of Appeals and state courts of last resort which have considered the issue have reached divergent conclusions. *See, e. g., Edwards v. National Audubon Society, Inc.*, 556 F.2d 113 (2d Cir.), *cert. denied sub. nom., Edwards v. New York Times Co.*, 434 U.S. 1002 (1977) (the accurate and disinterested reporting of newsworthy charges made by a responsible organization against a public figure, regardless of the publisher's private views regarding their validity, is privileged under the First Amendment); *Dickey v. CBS Inc.*, 583 F.2d 1221 (3d Cir. 1978) (privilege rejected, but see *Medico v. Time, Inc.*, 643 F.2d 134 (3d Cir.), *cert. denied*, 454 U.S. 836 (1981), which characterized the discussion in *Dickey* as *dictu*); *McCall v. Courier-Journal*, 623 S.W. 2d 882 (Ky. 1981), *cert. denied*, 456 U.S. 975 (1982) (privilege rejected).

case of *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). That case and its progeny make clear that the right of a public official to maintain a libel action is severely circumscribed because of the need to protect the news media — and ultimately the public — from the dangers of self-censorship. *See, e.g., Time, Inc. v. Pape*, 401 U.S. 279 (1971); *St. Amant v. Thompson*, 390 U.S. 727 (1968); *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967). In furtherance of the important societal goals advanced by these decisions — especially that "debate on public issues should be uninhibited, robust, and wide-open," *Times v. Sullivan*, 376 U.S. at 270 — it should be the function and privilege of a broadcaster such as WKBS-TV to accurately transmit charges made by one public official about the official conduct of another.

Constitutional protection for such accurate republications provides essential recognition that public officials — and what they do or say — are so integral a part of public debate on public issues that their remarks contribute to that debate whether true or false. Public transmission of statements made by these influential officeholders should be encouraged to fulfill the structural role of the First Amendment in securing and fostering our system of self-government by providing wide access to information on public issues. *See, e.g., Globe Newspaper Co. v. Superior Court*, U.S. , 73 L.Ed.2d 248, 255-56 (1982); *Richmond Newspapers, Inc. v. Commonwealth of Virginia*, 448 U.S. 555, 587-88, 592-93 (1980) (Brennan, J., with whom Marshall, J., joined, concurring in the judgment).

Accurate, impartial republication by the media of the comments of one public official about another, regardless of the state of mind of the republisher, is no less potentially valuable to public debate as speech which this Court has held to be protected under the *Times v. Sullivan* actual malice standard. When the public hears the statements made by one public official about an-

other, the reliability of the public official's comments affects not only his credibility but also the extent to which the public will accept his view of public issues. In addition, this Court itself has recognized that "[e]ven a false statement may be deemed to make a valuable contribution to public debate, since it brings about 'the clearer perception and livelier impression of truth, produced by its collision with error.' " *Times v. Sullivan*, 376 U.S. at 279 n.19 (quoting J.S. Mill, *On Liberty* 15, Oxford: Blackwell 1947). Similarly, there is a value in keeping the public debate open to unorthodox beliefs, no matter how false or pernicious they appear to be; indeed, many apparent falsehoods have subsequently proved true, just as many widely acknowledged truths have proved erroneous.

In this case WKBS-TV provided a forum for a discussion of newsworthy affairs, which provided residents of Greater Philadelphia with the views of some of the participants in a matter of serious public concern, *i.e.*, the prosecution of cases involving allegations of police misconduct. WKBS-TV was completely disinterested as to the allegedly defamatory comment made by one public official about another. As described by the dissent in the Pennsylvania Superior Court: "Field Communications was merely the conduit of the information, and . . . there was no showing of malice attributable to Field in its capacity as a disseminator of information to the public. . . ."[3]

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3. This case thus is not unlike *Greenbelt Cooperative Pub. Ass'n v. Bresler*, 398 U.S. 6 (1970), where this Court stated:

> "It is not disputed that the articles published in the petitioners' newspaper were accurate and truthful reports of what had been said at the public hearings before the city council. In this sense, therefore, it cannot even be claimed that the petitioners were guilty of any 'departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers,' *Curtis Publishing Co. v. Butts, supra*, at 155 (opinion of Harlan, J.), much less the knowing use of falsehood or a

In this case, even if the comments at issue are not viewed as constitutionally protected expressions of opinion, Field should not be subject to a potential libel judgment. If a broadcaster, in televising verbatim discussions of public issues, were required to vouch for the veracity of every statement made by one public official about another, the flow of information to the public about its courts and public officials would be severely impeded. Under the First Amendment, WKBS-TV must be allowed to provide this kind of information to the public free from fear of liability in a defamation action.

2. Contrary to Decisions of This Court, the Decision Below Creates Broad Exceptions to the First Amendment Protection for Expressions of Opinion Concerning Public Officials

The decisions of this Court recognize an absolute federal constitutional privilege for statements of opinion concerning the performance of the duties of a public officials. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974). As held in *Gertz*, the First Amendment does not allow any litigation to determine whether an idea or opinion is true or false:

NOTE — *(Continued)*

reckless disregard of whether the statements made were true or false.

* * *

"The Greenbelt News Review was performing its wholly legitimate function as a community newspaper when it published full reports of these public debates in its news columns. If the reports had been truncated or distorted. . ., this would be a different case. But the reports were accurate and full."
Id. at 12-13, 14 (citation and footnote omitted).

Greenbelt, however, was not decided on the basis that the content of the news articles was an accurate, disinterested publication; rather, the Court held that the comments at issue were rhetorical hyperbole incapable of a defamatory meaning. *Id.* at 14.

> "Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." Id. at 339-40.

The *Gertz* principle is based upon the impossibility of proving, one way or the other, whether an opinion concerning the performance in office of a public official is true or is false, as well as the random nature of a jury decision if juries were to be permitted to attempt to decide the truth or falsity of opinions concerning public officials. Indeed, since the *Gertz* principle is based on the impossibility of proving whether an opinion is true or false, the principle protects speech directed to persons who are not public officials. As stated in *Hotchner v. Castillo-Puche*, 551 F.2d 910 (2d Cir.), *cert. denied*, 434 U.S. 834 (1977):

> "An assertion that cannot be proved false cannot be held libellous. A writer cannot be sued for simply expressing his opinion of another person, however unreasonable the opinion or vituperous the expressing of it may be. See *Gertz v. Robert Welch, Inc.*, *supra*, 418 U.S. at 339-40; *Buckley v. Littell*, [539 F.2d 882], *supra* at 893." 551 F.2d at 913.

This doctrine also reflects the conclusion that "[a]n individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs." *Gertz v. Robert Welch, Inc.*, 418 U.S. at 344. Even before those developments in the law of defamation which include the *Gertz* decision, this Court presumed that "[j]udges are supposed to be men of fortitude, able to thrive in a hardy climate." *Craig v. Harney*, 331 U.S. 367, 376 (1947).

Although the decision below refers to the *Gertz* principle, the Opinion reaches the conclusion that the comments by Petitioner Parry are not expressions of

opinion protected by the *Gertz* principle but involve either a "simple statement of fact," as to one part of the comments sued upon, or an expression of opinion made on the basis of "undisclosed facts about the plaintiff that must be defamatory in character in order to justify the opinion," apparently referring to another portion of the comments sued upon. Opinion of Judge Hester at A-12, 456 A.2d at 1373.

The decision of the Court below describes that portion of the comments sued upon which the Court construes to be a "simple statement of fact," as follows:

> "His remarks concerning Judge Braig could reasonably be interpreted as a simple statement of fact, e.g., 'Judge Braig is no friend of the Police Brutality Unit.' " Opinion at A-12, 456 A.2d at 1373.

By thus construing an expression of opinion concerning bias to be a "simple statement of fact," the Court below has required a jury trial on a question of opinion, contrary to the *Gertz* decision and other leading cases applying *Gertz* to comments about Judges. The leading appellate decision involving the application of the *Gertz* principle to vituperative comments concerning the conduct of a Judge is *Rinaldi v. Holt, Rinehart & Winston, Inc.*, 42 N.Y. 2d 369, 366 N.E.2d 1299, *cert. denied*, 434 U.S. 969 (1977), which carefully follows *Gertz*. Consistent with the *Rinaldi* decision, the words "Judge Braig is no friend of the Police Brutality Unit," even if construed as "Judge Braig is biased in favor of the Police," constitute an expression of opinion, because the truth or falsity of bias in a judge is not subject to objective proof. Indeed, the New York Court of Appeals correctly followed *Gertz* to hold, in the *Rinaldi* decision, that vehement statements concerning a Judge, including statements that the Judge was "incompetent" or that the Judge "is unfit for his office," were subject to absolute federal constitutional privilege, even as to the plaintiff in that case, a Judge who had (at the time of the publication

complained of) been vindicated by two separate investigating groups of the Bar. 366 N.E.2d at 1306.

Exactly the same reasoning is mandated by *Gertz* as to the subjective question of whether a Judge is subject to bias in favor of a particular group, such as the police.

Although the Court below explicitly treated the "no friend" portion of Petitioner Parry's remarks as being separately actionable, the comment in the instant case which may have caused the litigation to be commenced is probably the statement by defendant Parry that Judge Braig caused the *Bronzeill* case "to get blown out."

The decision below purports to avoid the *Gertz* rule by reaching the conclusion that the instant case involves a situation in which "the derogatory opinion expressed in the comment [by the speaker] must have been based on undisclosed defamatory facts . . . ." and hence is not within the *Gertz* rule. *Compare* Restatement, Torts (Second), Section 566, Comment c at 173 (1977), with the Opinion of Judge Hester at A-12, 456 A.2d at 1373. This holding has the effect of undermining the *Gertz* principle because there are no concealed defamatory facts which are at issue concerning Petitioner Parry's comments in the television program. To the contrary, the things of which the Respondent Braig complained, including the accusation of bias in favor of the Police and the opinion that the case was "blown out," are matters which appear on the face of the comments themselves. The instant situation is therefore entirely distinguishable from those cases in which the speaker does refer to undisclosed facts, such as cases which involve veiled insinuations that a judge is involved with organized crime, or that a judge's disposition of a case is "corrupt." Situations of that latter type were considered by the New York Court of Appeals in the *Rinaldi* case, 42 N.Y. 2d 369, 366 N.E.2d at 1299 (comment by reporter that a judge was "probably corrupt," combined with other statements having an undertone of conspiracy and criminal behav-

ior, is deemed a statement of fact not actionable absent proof of falsity or reckless disregard, but is not subject to absolute constitutional protection under the opinion principle, distinguishing statement that a judge is "incompetent," which is subject to absolute federal constitutional privilege).

In the instant case, there has been no contention, either in the original Complaint or any of the subsequent proceedings, that Petitioner Parry implied that Judge Braig was "corrupt." Instead, Parry's opinion concerning bias and his opinion that the prosecution was incorrectly terminated are both opinions which appear on the face of the comments themselves.

But even if the words "blown out" are deemed to include some unstated elements of fact, it is impossible for that element of fact to be submitted for decision by a jury and hence, under the *Gertz* principle, the statement should have been deemed to be constitutionally protected opinion. How could a jury determine whether Judge Braig's termination of the Bronzeill prosecution was a correct decision compelled by the conduct of the prosecutor, as Respondent Braig contended, or was unjustified, as Petitioner Parry believed? Is the jury to receive expert testimony, perhaps from retired Judges, that the termination of the prosecution was, or was not, consistent with the applicable precedents concerning intentional prosecutorial misconduct? What instructions shall be given to the jury to guide its determination whether Respondent Braig acted correctly or incorrectly in his terminating the prosecution in the *Bronzeill* case?

It is the impossibility of a rational jury determination of these issues which compels the conclusion that the second portion of Parry's comments — the portion which caused the suit to be brought — should also have been held to be within the *Gertz* principle of absolute federal constitutional protection.

CONCLUSION

The right of the news media to accurately and dispassionately transmit the views of one public official about another public official's performance of his official duties raises a First Amendment issue which goes to the heart of the ability of the media to perform their function of informing the public about matters of public interest and concern.

Further, the necessity that debate about public issues be robust and uninhibited requires constitutional protection for clearly labeled expressions of opinion about an elected official's performance of his duties.

WHEREFORE, Petitioners Field Communications Corporation and Lloyd George Parry respectfully urge this Court to grant their Petition for Certiorari.

Respectfully submitted,

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APPENDIX

HONORABLE JOSEPH P. BRAIG, *Appellant*	)	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	)	PHILADELPHIA
FIELD COMMUNICATIONS and LLOYD GEORGE PARRY	)	No. 278 PHILADELPHIA, 1981

Appeal from an Order of the Court of Common Pleas, Civil Division, of Philadelphia County, No. 3446 March Term, 1980.

Before HESTER, WICKERSHAM and POPOVICH, JJ.

OPINION BY HESTER, J.:

Filed January 14, 1983

This is an appeal from two Orders of the Common Pleas Court of Philadelphia dated January 9, 1981, granting summary judgment in favor of appellees Lloyd George Parry (Parry) and Field Communications (Field).[1] Appellant Braig filed a complaint on April 21, 1980, alleging a defamation action against Parry and Field.

Parry was at all times relevant to this lawsuit an Assistant District Attorney and Chief of the Police Misconduct Unit of the District Attorney's Office of Philadelphia County. Field Communications is a corporation which owns WKBS-TV, Channel 48. WKBS-TV 48 "published" a television program entitled "On Target — The Bowe Case", which was taped on September 10, 1979, broadcast on September 23, 1979, at 11:30 p.m., and rebroadcast without change on September 29, 1979, at 10:00 a.m. Parry participated in the program representing the Police Misconduct Unit of the District Attorney's Office. The program concerned the trial of Officer Thomas Bowe, who had been charged with the murder

1. The Orders were issued by Judge Domenic D. Jerome, of the Court of Common Pleas of Delaware County, who specially presided over this case. However, venue remained in the Court of Common Pleas of Philadelphia County.

of a 19-year-old Philadelphia resident, Cornell Warren. This trial attracted a significant amount of public debate and generated an equal amount of controversy due to the fact that there had been a number of incidents of alleged excessive use of force by police officers against blacks. Officer Daryl Bronzeill, Bowe's partner, was charged with recklessly endangering the life of Warren, as well as simple assault and aggravated assault. Both cases were prosecuted by Robert Campolongo, an Assistant District Attorney who served in the Police Misconduct Unit under the supervision of Parry.

Appellant, a Judge in the Court of Common Pleas of Philadelphia County, presided at the trial of Officer Bronzeill. The trial was aborted when appellant, on his own motion, declared a mistrial on the ground of "intentional prosecutorial misconduct". Officer Bowe was acquitted by a jury in a trial before Judge John Geisz.

The 30-minute television program at issue was moderated by Brahin Ahmaddiya, who had been serving as moderator and associate producer of the regularly scheduled weekly "On Target" programs. The "On Target" program had been presented by Channel 48 for a number of years. It was designed to provide a forum for serious discussion by knowledgeable panelists concerning minority-affairs matters of current public interest.

Ahmaddiya and Leon Haines, an employee of Channel 48 and producer/director of "On Target", selected the participants for the program, which was approved for broadcast by Martin Jacobs, Channel 48's manager of news and public affairs. Originally, Ahmaddiya was to have three guests on the show: Benjamin Johnson, a prominent black criminal defense attorney who had represented Cornell Warren's family, Campolongo, and Parry. Campologno, however, could not attend. Therefore, the on-camera participants were Ahamaddiya, Johnson, and Parry. In accordance with normal station procedure, no script or list of questions was prepared in advance.

The program centered upon the prosecution of Officer Bowe. As the panelists discussed the case, Johnson was critical of the prosecutorial style of Campolongo, the Assistant District Attorney who prosecuted both cases, and was particularly critical of the decision to have Campolongo prosecute the Bowe case after the Bronzeill prosecution had been thrown out by Judge Braig for Campolongo's prosecutorial misconduct. To underscore this point, Johnson quoted a statement critical of Campolongo which had been made by Judge Braig during the Bronzeill trial. The following colloquy then occurred:

> Parry: I was going to say that if you want to use Judge Braig's statement, you know, you are opening up a whole other area. In fact, it was a whole other case in terms of the presentation that was made to the court. Judge Braig is no friend of the police brutality unit. I don't care who we sent in to try that case, in my opinion, that case was going to get blown out.
>
> Ahmaddiya: Okay, we have to ask this question —
>
> Johnson: This is the second time, no matter which judge they have, they accuse the judge of blowing the case out.
>
> Parry: Judge Geisz didn't blow the case out.

This colloquy took approximately thirty seconds of the thirty minute program. It came near the show's end as Ahmaddiya was preparing to summarize and close the program.

The videotaped program was broadcast as scheduled on September 23, 1979. A day or two later appellant telephoned Kenneth T. MacDonald, then Vice President and General Manager of Channel 48. Appellant stated that he had been told that an objectionable reference to him had been made on the On Target program which had aired the previous Sunday. Appellant said he had

not seen the program and asked for a copy of the transcript. MacDonald explained that a transcript had not been made, but told appellant he could send his secretary to the station so that she could watch the program and write down any statement concerning him. Judge Braig said that he understood the program was to be rebroadcast. MacDonald acknowledged that it was scheduled to be aired again on the coming Saturday. MacDonald offered to view the program tape and call the appellant the next day.

MacDonald instructed a member of the station's crew to make a cassette tape of the program. The next day, MacDonald viewed the tape with Joseph R. Weber, the station's Program Manager. Although MacDonald did not know exactly what he was looking for, in his words, ". . . when the judge's name was brought up, we played it back a couple of times and went over it." MacDonald subsequently viewed the program by himself. On September 27, 1979, Judge Braig called MacDonald. MacDonald told Braig that he had found nothing objectionable on the tape. He then said he would have the tape cassette of the program hand-delivered to the Judge. MacDonald verified that the program was going to be rebroadcast on September 29, 1979. Instead of hand-delivering the tape, the tape was mailed. Judge Braig did not receive it until Monday, October 1, 1979.

The lower court held that the words complained of by Judge Braig are capable of a defamatory meaning.[2] The lower court also held that no absolute privilege protected Parry as an Assistant District Attorney and that no

2. The trial judge correctly observed that in Pennsylvania, it is the function of the trial court, in the first instance, to determine whether "the communication complained of is capable of a defamatory meaning. If the court so finds, then it is for the jury to determine whether it is so understood by those hearing the statement." *Corabi v. Curtis Publishing Co.*, 441 Pa. 432, 442, 273 A.2d 899, 904 (1971).

conditional privilege protected Field. However, the lower court entered summary judgment on behalf of both defendants on the basis of its conclusion that "as a matter of law plaintiff cannot prove actual malice against either defendant."

We first address the standard of review in this case. Recently, there has been considerable attention devoted to the standard of review applicable to a defamation action which has been disposed of by summary judgment pursuant to Pa. R.C.P. No. 1035. See *Curran v. Philadelphia Newspaper, Inc.*, 261 Pa. Super. 118, 395 A.2d 1342 (1978), affirmed in part and reversed in part, 497 Pa. 163, 439 A.2d 652 (1981); *Brophy v. Philadelphia Newspaper, Inc.*, 281 Pa. Super. 588, 422 A.2d 625 (1980), (petition for allowance of appeal denied). It is undisputed that, in a defamation case,

> ". . . summary judgment should be granted only when warranted under Pa. R.C.P. No. 1035, i.e., where the evidence viewed in the light most favorable to the non-moving party, reveals an absence of a genuine issue as to the existence of actual malice as defined in *New York Times Company v. Sullivan*, [376 U.S. 254, 84 S. Ct. 710, 11 L.Ed 2d 686 (1964)."

Id, at 599, 422 A.2d at 631.

Recently, the Supreme Court of Pennsylvania, in *Curran v. Philadelphia Newspapers, Inc.*, supra, clarified the standard of review applicable to a motion for summary judgment in a defamation action. The Court stated:

> "The inquiry, therefore, is whether the evidence submitted to the court on a defendant's motion for summary judgment would permit the plaintiff to meet the actual malice standard.
>
> Summary judgment is proper 'only if the evidence then before the court is such as would war-

> rant the granting of a defendant's point for binding instructions after trial.' *Bremmer v. Protected Home Mutual Life Insurance Company*, 436 Pa. 494, 497, 260 A.2d 785, 786 (1970)." *Curran*, supra, 497 Pa. at 177, 439 A.2d at 659.

The Court also emphasized the applicability of the rule "[t]hat trial by testimonial affidavit is prohibited. . . .The prohibition against reliance upon the testimonial affidavits of the moving party is derived from the famed case of *Nanty-Glo Borough v. American Surety Company*, 309 Pa. 236, 163 A 523 (1932)." *Id.* at 183, 439 A.2d at 662; See also *Thompson Coal Company v. Pike Coal Company*, 488 Pa. 198, 204, 412 A.2d 466, 468-69 (1979).

The court concluded:

> "We are satisfied that case law of the Supreme Court of the United States supports our adherence to the Nanty-Glo rule in this controversy over the existence of actual malice. Recently, in *Hutchinson v. Proxmire*, 443 U.S. 111, 99 S.Ct. 2675, 61 L. Ed. 2d 411 (1979), the Supeme Court 'express[ed] some doubt' about the 'rule' favoring the use of summary judgment in determining whether a plaintiff has adequately shown actual malice under *Times v. Sullivan*."

Curran, supra, 497 Pa. at 181, 439 A.2d at 662. Therefore, in *Curran*, the Supreme Court viewed the evidence in the light most favorable to the appellant and did not rely upon any of the testimonial affidavits of the moving party.[3]

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3. In *Curran*, the Court affirmed the granting of defendant's motion for summary judgment with respect to its coverage of appellant's resignation. The court based its decision upon the finding that appellant's own deposition evidence established that the defendant's reporter had received his information from a reliable source. Therefore, as a matter of law, appellant was unable to prove actual malice.

The Court, nevertheless, acknowledged that a plaintiff has a greater burden of proof in a defamation action as a result of the First-Amendment policy expressed in *New York v. Sullivan*, supra, 439 A.2d at 660. See also Opinion in Support of Affirmance by Spaeth, J. in *Curran*, supra, 261 Pa. Super. at 118, 395 A.2d at 1346; concurring opinion of Spaeth, J. in *Brophy*, supra, 281 Pa. Super. at 604, 422 A.2d at 634; dissenting opinion by Justice Brennan to the Denial of Certiorari in *Lorain Journal Company v. Milkovich*, 449 U.S. 966, 101 S. Ct. 380, 66 L.Ed 2d 232 (1980).

We note that appellant in the instant case has argued in the lower court and preserved on appeal the contention that he is not a "public figure" within the meaning of *New York Times v. Sullivan* and its progeny. Although appellant concedes he is certainly an elected "public official", he, nevertheless, maintains that he is not a "public figure" and should not be required to prove actual malice on the part of the defendants, since, on September 23 and September 29, 1979, when publication was made, *Bronzeill* was still pending before him on post-trial motions. Therefore, the Code of Judicial Conduct would have prohibited him from publicly commenting on this case. The appellant argues that, since the underlying reasoning in *New York Times v. Sullivan* and its progeny is that a "public figure" has an opportunity to respond to any criticism as a result of ready access to the media, he is not a "public figure" since he was unable to respond to Parry's statements. See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974); *Time, Inc. v. Firestone*, 424 U.S. 448, 96 S. Ct. 959, 47 L. Ed. 2d 154 (1976); *Hutchinson v. Proxmire*, supra; *Wolston v. Readers Digest Associations, Inc.*, 443 U.S. 157, 99 S.Ct. 2701, 61 L.Ed 2d 450 (1979).

We reject this contention. In *Gertz*, supra, the Supreme Court rejected the previous plurality opinion in *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 91 S. Ct. 1811, 29 L.Ed 2d 296 (1971), which held that the *New*

York Times privilege extended to defamatory falsehoods relating to private persons if the statements concerned matters of general or public interest. The Court, in *Gertz*, adopted a public figure/private figure distinction and emphasized:

> "More important than the likelihood that private individuals will lack effective opportunities for rebuttal, there is a compelling normative consideration underlying the distinction between public and private defamation plaintiffs. An individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. He runs the risk of closer public scrutiny than might otherwise be the case. And society's interest in the officers of government is not strictly limited to the formal discharge of official duties. As the Court pointed out in *Garrison v. Louisiana*, 379 U.S., at 77, 13 L.Ed. 2d 125, 85 S. Ct. 209, the public's interest extends to 'anything which might touch on an official's fitness for office . . . Few personal attributes are more germane to fitness for office than dishonesty, malfeasance, or improper motivation, even though these characteristics may also affect the official's private character.' " 418 U.S. at 344, 345 41 L.Ed.2d at 808.
>
> "Those who, by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention, are properly classed as public figures *and those who hold governmental office* may recover for injury to reputation only on clear and convincing proof that the defamatory falsehood was made with knowledge of its falsity or with reckless disregard for the truth. This standard administers an extremely powerful antidote to the inducement to media self-censorship of the common-law rule of strict liability for libel and slander. And it exacts a correspondingly high price from the

> victims of defamatory falsehood. Plainly many deserving plaintiffs, including some intentionally subjected to injury, will be unable to surmount the barrier of the New York Times test. Despite this substantial abridgment of the state law right to compensation for wrongful hurt to one's reputation, the Court has concluded that the protection of the New York Times privilege should be available to publishers and broadcasters of defamatory falsehood concerning *public officials and public figures*." (emphasis supplied).

Gertz, supra, at 342-43, 94 S. Ct. at ____, 41 L.Ed.2d at 807. In the instant case, Judge Braig voluntarily decided to seek public office as a Judge in the Court of Common Pleas of Philadelphia County. He, therefore, willingly accepted certain necessary consequences of that involvement in public affairs including the risk of closer public scrutiny. Presumably, Judge Braig's decision to seek his office was also made with knowledge that he would be bound by Cannon 3A. (6) of the Code of Judicial Conduct, which prohibits ". . . public comment about a pending proceeding. . . ."

As stated by the lower court:

> "Nonetheless we are aware of the occupational hazards of being a Judge and we agree that 'Judges are suppose to be men of fortitude, able to thrive in a hardy climate.' *Craig v. Harney*, 331 U.S. 367 at 376 (1947). We would substitute 'persons' for 'men' in today's society."

As stated in *Gertz*, supra:

> "We begin with the common ground. Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. But there is no constitutional value in

> false statements of fact. Neither the intentional lie nor the careless error materially advances society's interest in 'uninhibited, robust, and wide open' debate on public issues. *New York Times Company v. Sullivan*, [supra]."

Gertz, supra, at 339-40, 945 S. Ct. at ____, 41 L.Ed.2d at 805. Although the lower court held that appellant did not establish a genuine issue as to any material fact and that, as a matter of law, he could not prove actual malice against either defendant, it also concluded that Parry's remarks constituted expressions of opinion concerning the performance of appellant's official duties. As correctly stated by the lower court, whether a particular statement constitutes fact or opinion is a question of law. *Old Dominion Branch No. 496 v. Austin*, 418 U.S. 264, 94, S. Ct. 2770, 41 L.Ed.2d 745 (1974), *Doman v. Rosner*, 246 Pa. Super. 616, 371 A.2d 1002 (1977).

Although Parry's statement does contain the qualification "in my opinion", the entire statement[4] is not absolutely privileged as a result of *Gertz*, supra.

The lower court held "in the case at bar, the court is of the opinion that these statements can reasonably be interpreted to indicate that he [Judge Braig] was biased in favor of the police and against the police brutality unit. Finally, it can also be interpreted as meaning that the case was fixed. . . ." We agree with the lower court's interpretation of Parry's statement, that it is ". . . capable of a defamatory meaning and a jury could so find."

However, we disagree that Parry's remarks constituted an expression of opinion within the meaning of *Gertz*, supra. Concerning this point, we adopt Section 566 of the RESTATEMENT (SECOND) OF TORTS (1977), which states:

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4. "Judge Braig is no friend of the Police Brutality Unit. I don't care who we sent in to try that case, in my opinion, that case was going to get blown out. . . . Judge Geisz didn't blow the case out."

Expression of Opinion.

A defamatory communication may consist of a statement in the form of an opinion, but a statement of this nature is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion.

Comment b to Section 566 provides a suitable analysis regarding the types of opinion:

"There are two kinds of expressions of opinion. The simple expression of opinion, or the pure type, occurs when the maker of the comment states the facts on which he bases his opinion of the plaintiff and then expresses a comment as to the plaintiff's conduct, qualifications or character. . . . The second kind of expression of opinion, or the mixed type, is one which, while an opinion in form or context, is apparently based on facts regarding the plaintiff or his conduct that have not been stated by the defendant or assumed to exist by the parties to the communication. Here the expression of the opinion gives rise to the inference that there are undisclosed facts that justify the forming of the opinion expressed by the defendant. . . "

If the defendant states certain non-defamatory facts concerning the plaintiff, on the basis of which he expresses a defamatory opinion, Comment c to Section 566 recognizes that this "pure" expression of opinion is absolutely privileged as a result of *Gertz*, supra. Comment c states:

"The distinction between the two types of expression of opinion, as explained in Comment b, therefore, becomes constitutionally significant. The requirement that a plaintiff prove that the defendant published a defamatory statement of fact about him that was false (See Section 558) can be complied with by proving the publication of an expression of opinion of the mixed type, if the comment is

> reasonably understood as implying the assertion of the existence of undisclosed facts about the plaintiff that must be defamatory in character in order to justify the opinion. A simple expression of opinion based on disclosed or assumed nondefamatory facts is not itself sufficient for an action of defamation, no matter how unjustified and unreasonable this opinion may be or how derogatory it is. . . ."

In reviewing Parry's remarks, we are convinced that they do not constitute a "pure" expression of opinion, which would be absolutely privileged as a result of *Gertz*. His remarks concerning Judge Braig could reasonably be interpreted as a simple statement of fact, e.g., "Judge Braig is no friend of the Police Brutality Unit." However, at least, his remarks constitute a "mixed" expression of opinion made on the basis ". . . of undisclosed facts about the plaintiff that must be defamatory in character in order to justify the opinion." See *Beckman v. Dunn*, 276 Pa. Super. 527, 419 A.2d 583, 587 (1980).

Therefore, on the basis on the foregoing, we address the issue whether appellant's evidence, viewed in the light most favorable to the appellant, establishes a sufficient question of fact concerning the issue of actual malice so as to permit the case to proceed before a jury. We find that appellant's evidence does present a genuine question of fact, so that a jury could find the existence of actual malice with convincing clarity as to both defendants.

It is elementary that actual malice involves a knowing falsehood or a reckless disregard of the truth or falsity of a publication. *New York Times, Inc. v. Sullivan*, supra. As stated in *Brophy*, supra,

> "The rationale for this admittedly strict standard is the recognition that 'erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the breathing space that they need . . . to survive . . .' *New*

> *York Times, Inc. v. Sullivan*, supra, 376 U.S. at 271-72, 84 S.Ct. at 721, 11 L.Ed 2d at 701. . . . This constitutional protection extends to the 'honest utterance, even if inaccurate' but not to the 'calculated falsehood.' *Garrison v. Louisiana*, 379 U.S. 64, 75, 85 S.Ct. 209, 216, 13 L.Ed 2d 125, 133 (1964)."

Brophy, supra, 281 Pa. Super. at 602, 422 A.2d at 633. In *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S.Ct. 1323, 1325, 20 L.Ed. 2d 262, 267 (1968), the Court stated that a "public figure" plaintiff could establish reckless disregard for truth or falsity on the basis of "sufficient evidence to permit the conclusion that the defendant, in fact, entertained serious doubt as to the truth of his publication."

With respect to defendant Parry, his remarks were not so closely related to his duties as Assistant District Attorney as to bring him within the scope of the district attorney's privilege. While he might have been invited to appear on the television show, the purpose was to discuss the *Bowe* case. This did not give him the right to say whatever he wanted to say on any other subject. His statement relating to Judge Braig and the *Bronzeill* case had nothing to do with the program itself nor with Parry's duties as Assistant District Attorney. Parry never asked, neither before nor after September of 1979, for the recusal of Judge Braig in the *Bronzeill* case.[5] Furthermore, as pointed out by the lower court, Parry never sought any review of Judge Braig's decision or conduct by the Judicial Inquiry and Review Board. On March 30, 1979, Parry sent a letter to Judge Braig demanding that the *Bronzeill* case be listed for trial, despite Judge Braig's decision to grant a mistrial "based on intentional prosecutorial misconduct". His letter also objected to the granting of the mistrial *sua sponte*.

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5. Judge Braig recused himself on October 29, 1979. Subsequently, Judge Gafni ruled upon the district attorney's petition for a new trial, which was denied. No appeal was taken.

Parry admits to the fact that Campolongo had a "problem" of being "cited for prosecutorial misconduct". Parry testified at his deposition as follows:

Q. Well, did you find that out before or after the Bronzeill matter?
A. Well, I found out about Mr. Campolongo's background when I assumed my duties with the district attorney's office, which was before the Bronzeill case.
Q. Was there a case tried by Mr. Campolongo which resulted in a reversal because of his conduct in Court?
A. I'm sure there was.
Q. What do you mean, you are sure there was?
A. Well, yes.
Q. Was there more than one case?
A. Yes.
Q. Did you discuss this with Mr. Campolongo?
A. Yes.
Q. Before or after the Bronzeill matter?
A. Before Bronzeill.
Q. And how many cases do you understand he had beer cited either by a trial judge or an appellate judge for prosecutorial misconduct?
A. I don't know about citations by trial judges. I know of one appellate decision and possibly another appellate decision.

More importantly, in an apparent attempt to justify his remarks concerning Judge Braig, Parry explained that he had conducted a "survey" because he had ". . . wanted to find out if Judge Braig would be a fair and impartial judge in the case."

The only other "police brutality" case in which Judge Braig presided was *Commonwealth v. Judge and Salarno*, in which Judge Braig found both defendants guilty. On the basis of the post-trial motion of subse-

quently-appointed counsel, Judge Braig granted a new trial based upon *Commonwealth v. Mabie*, 467 Pa. 464, 359 A.2d 369 (1976) (concerning the issue of ineffective assistance of counsel). He did so following his denial of original counsel's post-trial motions, and he stated on the record his disagreement with *Mabie*. This case was tried two years before Parry came to Philadelphia, and Parry admits that he never read the transcript.

Parry claims that he consulted with assistant district attorney Harry Spaeth, who tried the *Salarno-Judge* case. Parry concedes that he did not know that post-trial motions were filed by original trial counsel and denied by Judge Braig. Parry admits that he did not know if any appeal was taken by the district attorney's office or if Judge Braig was affirmed by the Superior Court. Parry admits knowing that the case had been retried and that the defendants had been acquitted.

Concerning his discussion of *Salarno-Judge* with Assistant District Attorney Spaeth, Parry testified at his deposition, as follows:

> "And that during the course of this side bar, Judge Braig had stated to Mr. Spaeth that he, Judge Braig, was going to be attending a banquet given by the Fraternal Order of Police during — it was going to be that night, which would be during the course of the trial, and did Mr. Spaeth have any objection to Judge Braig attending this banquet, especially in light of the fact that Mr. Pirillo [defense counsel for the policeman] was also going to be present.
>
> Mr. Spaeth said that he had no problem with that, and that he had heard later that during the course of the banquet, Mr. Pirillo, who had been one of the speakers from the rostrum, had kidded Judge Braig about the fact that they had a police brutality case in progress, and that the next day, to the surprise of Mr. Spaeth, Judge Braig found Mr. Pirillo's clients guilty, and then at some later time ruled that

the conviction should be overturned or that a new trial should be granted because Mr. Pirillo had been ineffective as counsel for the defendants."

Parry also claims that he spoke to District Attorney Rendell, who never tried a case before Judge Braig. Rendell never indicated that he believed that Judge Braig was biased in favor of the police. Rendell personally told Judge Braig in January, 1980, that Parry had indeed "gone too far" in his statements on Channel 48.

Parry also discussed Judge Braig with Campolongo, who had not tried a case before Judge Braig prior to *Bronzeill*. Parry also claims that he discussed Judge Braig with "many others". However, Parry never identified any of these individuals. Judge Braig conducted his own independent inquiry of three assistant district attorneys, who tried the greatest number of cases before him, and each told Braig that they never spoke to Parry.[6]

The only civil matter heard by Judge Braig involving police officers as parties, *Brophy v. Philadelphia Newspapers, Inc.*, supra, was a defamation suit filed by three police officers against the Philadelphia Inquirer, which was decided prior to *Bronzeill*. Judge Braig granted summary judgment against the police officer-plaintiffs, which was affirmed by the Superior Court.

Finally, in a further attempt to justify his remarks concerning Judge Braig, Parry stated that he conducted an investigation into Judge Braig's background. Appellant properly argues that Parry's motives for this investigation, as well as the accuracy of the information he gained by it, are material to the issue of actual malice. Appellant emphasizes ". . . two egregious errors, which apparently were fundamental facts in Parry's analysis leading him to a conclusion that Judge Braig was biased in favor of the police." These errors are that Parry stated

6. At this point, we note that we are summarizing this evidence in the light most favorable to the plaintiff, without deciding the truth or falsity thereof.

(1) Judge Braig was the campaign manager for Mayor Frank L. Rizzo; whereas, he was actually a part-time unpaid volunteer; and (2) "Mayor Rizzo had been responsible for his ascension to the bench"; whereas, Judge Braig had actually been elected to the bench in 1975.

Finally, Parry testified at his deposition as follows:

> "Generally, if the matter is pending before a judge, I would consider it to be improper to comment upon the issues involved in that matter pending before the judge, yes."[7]

On the basis of the foregoing, we hold that there is a genuine issue which should be presented to the jury concerning Parry's actual malice. This evidence is sufficient to permit a jury to decide whether Parry entertained "serious doubts" concerning the truth of his defamatory statement. *St. Amant*, supra, 390 U.S. at 731, 88 S. Ct. at 1325, 20 L.Ed.2d at 267.

Concerning Field, Judge Braig testified that he specifically told the General Manager Kenneth MacDonald that he objected to Parry's accusing him of "blowing out" the case. Judge Braig also told MacDonald that he considered the statement an attack on his integrity. Judge Braig also testified that, when he first contacted MacDonald on September 26, 1979, MacDonald said he would be "shocked" if his employees would allow such a statement to be broadcast. Judge Braig also testified that on September 27, 1979, he again told MacDonald that he believed the words "blow out" to mean "illegal, unethical and corrupt". MacDonald refused Judge Braig's request to come to the station to view the tape. MacDonald admits that he offered to have a duplicate

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7. Parry did not admit that he knew the *Bronzeill* case was still pending before Judge Braig. However, we accept as true, for the purposes of this opinion, that the case remained before Judge Braig until October 29, 1979, when he recused himself.

tape *hand-delivered* to Judge Braig prior to rebroadcast. MacDonald admits having viewed the tape prior to rebroadcast on at least two occasions and further admits that when Judge Braig's name was mentioned ". . . we played it back a couple of times and went over it".

Appellant does not contend that he could establish actual malice on the part of Field as a result of the initial broadcast. Appellant argues that there is "clear and convincing" evidence of actual malice on the basis of what transpired between the original broadcast and the rebroadcast on September 29, 1979. Viewing the evidence in the light most favorable to the plaintiff, we agree.

A jury should decide MacDonald's "state of mind" in deciding to rebroadcast the program. By his own account, MacDonald went over and over the tape. A jury could properly infer that he had "serious doubts" concerning the truth of the statements. Otherwise, this broadcast executive, with 30 years in the industry, would never have repeatedly reviewed the tape. A jury could find that MacDonald, as agent for Field, wanted to air the program a second time, despite "serious doubts" from his multiple viewings and from what Judge Braig had already told him concerning the truth, as well as the meaning, of the statements. A jury could also conclude that MacDonald did not want Judge Braig to view the tape prior to the scheduled rebroadcast on September 29, 1979. Accordingly, the tape was mailed, not hand-delivered, on Friday, September 28, 1979.

More importantly, during his deposition, Mr. MacDonald explained the "fairness doctrine", which is part of the National Association of Broadcaster's Code, as follows:

> "To start with, the program most certainly should be balanced, and if there's only one side of the view, that would be objectionable. It could well be that something that was defamatory or slanderous could have been said. I'm sure that that's what the judge was talking about."

MacDonald admitted that he was responsible for the overall direction of the station and that he had final responsibility for developing station policy. He admitted that he was the ultimate authority with respect to editing or cancelling programs to avoid the publication of untruths or slanderous remarks.

It cannot be disputed that the program "On Target — The Bowe Case" was not "balanced" within the meaning of the "fairness doctrine". Parry, Campolongo, and Johnson were the only invited guests. Ahmaddiya, Parry and Johnson were the only on-camera participants. Defense counsel for Bowe had not been invited. Furthermore, since the program was not intended to concern the *Bronzeill* case, defense counsel for Bronzeill had not been invited, and neither Judge Braig nor Judge Geisz had been invited. Finally, since the program was intended to only concern the *Bowe* case, it is apparent that Parry's comments concerning Judge Braig and the *Bronzeill* case were incidental, unplanned, and unnecessary to the theme of the program.

Under these circumstances, a jury should decide MacDonald's "state of mind" in deciding to rebroadcast the program over Judge Braig's objection. *Herbert v. Lando*, 441 U.S. 153, 99 S. Ct. 1635, 60 L.Ed.2d 115 (1979).

Finally, under the circumstances of this case, summary judgment is not a "preferred" method of disposition. See *Curran*, supra. *Brophy*, supra. On the basis of now-famous footnote 9, the United States Supreme Court, in *Hutchinson v. Proxmire*, 443 U.S. 111, 120 n.9, 99 S. Ct. 2675, 2680 n.9, 61 L.Ed 2d 411, 422 n.9, has expressed its ". . . doubt about the so-called 'rule' [favoring summary disposition of defamation actions]. The proof of 'actual malice' calls a defendant's state of mind into question, [citation omitted], and does not readily lend itself to summary disposition. [citations omitted]."

In *Brophy*, supra, at 610, 422 A.2d at 637, Judge Spaeth correctly noted that, with respect to constitutional issues, "We are always able to permit greater freedom in this Commonwealth than do the federal courts. [citations omitted]." 422 A.2d at 637. However, on the basis of the Supreme Court's decision in *Curran*, supra, it is clear that Pennsylvania has decided not to expand the freedoms of the First Amendment in this area. We are bound by that decision.

Reversed and Remanded to the jurisdiction of the lower court with Instructions to deny defendants' motions for summary judgment and proceed to trial by jury.

Jurisdiction is relinquished.

POPOVICH, J., files a Concurring and Dissenting Statement.

HONORABLE JOSEPH P. BRAIG, *Appellant*	)	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	)	
FIELD COMMUNICATIONS and LLOYD GEORGE PARRY	)	No. 278 Philadelphia, 1981

Appeal from an Order of the Court of Common Pleas, Civil Division, of Philadelphia County, No. 3446 March Term, 1980.

Before: HESTER, WICKERSHAM and POPOVICH, JJ.

CONCURRING AND DISSENTING STATEMENT BY POPOVICH, J.:

Filed January 14, 1983

I concur in the result that the majority reaches regarding appellee-Parry's susceptibility to suit because his statements are capable of a defamatory meaning. However, I must dissent from the majority's reversal of summary judgment as to the other appellee, Field Communications. Field Communications was merely the conduit of the information, and, under the particular circumstances here, I find that there was no showing of malice attributable to Field in its capacity as a disseminator of information to the public, notwithstanding appellant's protestation that the information was false prior to the rebroadcast.

IN THE
COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY, PENNSYLVANIA

HONORABLE JOSEPH P. BRAIG	:	No. 3446
v.	:	MARCH TERM 1980
FIELD COMMUNICATIONS	:	
and	:	
LLOYD GEORGE PARRY	:	

James E. Beasley, Attorney for Plaintiff
David H. Marion, Attorney for Field Communications
Gregory M. Harvey, Attorney for Lloyd George Parry

OPINION

JEROME, J. FILED: February 23, 1981

The plaintiff in this case is a Judge of the Court of Common Pleas of Philadelphia County. He commenced this action in trespass to recover damages for certain alleged defamatory statements made by the defendant Parry during a television program telecast on WKBS-TV in Philadelphia. The writer of this Opinion was specially assigned by the Supreme Court of Pennsylvania to hear this case.

The defendant Lloyd George Parry is an Assistant District Attorney and Chief of the Police Misconduct Unit of the Philadelphia District Attorney's Office.

The defendant Field Communications is a corporation which owns television station WKBS-TV.

The statements in question were made by the defendant Parry while a panelist on a TV show known as "On Target." The show was taped on September 10, 1979, broadcast on September 23, 1979, and rebroadcast on September 29, 1979. During the broadcast, Mr. Parry made the following statement concerning the plaintiff, Judge Braig:

> "Judge Braig is no friend of the Police Brutality Unit. I don't care who we sent in to try that case, in my opinion that case was going to get blown out. . . . Judge Geitz didn't blow the case out."

It is alleged that the above quoted statement was directed to Judge Braig's conduct in the case of Commonwealth v. Bronzeill. It is further alleged that neither the Bronzeill case nor Judge Braig was the topic of discussion on the program. Finally, it is alleged that at the time of the taping, the Bronzeill case was still pending before Judge Braig.

Both defendants have filed Motions for Summary Judgment which Motions are presently before this Court for disposition. We have reviewed the videotape of the television show in question and we have been immeasurably aided by superlative Briefs submitted by counsel for all of the parties.

Basic to any defamation action are defamatory statements. In Pennsylvania, it is the function of the Trial Court, in the first instance, to determine whether or not the communication complained of is capable of a defamatory meaning. If the Court so finds, then it is for the jury to determine whether it was so understood by those hearing the statements. See *Corabi v. Curtis Publishing Company*, 441 Pa. 432, 273 A.2d 899 (1971).

The initial argument of both defendants in support of their Motions is that the above quoted statement does not meet the standard of a defamatory statement as set forth by our Courts. The defendants argue that the use of the words "blown out" are merely synonymous with terminated or dismissed. They argue that the statement was no more than an opinion or a rhetorical hyperbole or a vigorous epithet commonly heard in American public life and cannot be deemed defamatory.

Before considering the contentions of the parties, we feel that certain preliminary remarks are appropriate.

It is always difficult to decide First Amendment issues and it is especially painful to deprive a litigant an

opportunity to submit his grievance to a jury; more so when that litigant is a Judge with whom this writer would naturally identify himself. Nonetheless, we are aware of the occupational hazards of being a Judge and we agree that "Judges are supposed to be men of fortitude, able to thrive in a hardy climate." *Craig v. Harney*, 331 U.S. 367 at 376 (1947). We would substitute "persons" for "men" in today's society.

Parenthetically, we wish to make it clear that we do not approve of Parry's remarks. We consider those remarks inappropriate, ill-advised and unprofessional. See Code of Professional Responsibility DR 7-107D and 110B(1), DR 8-101A(2) and 102B. Clearly, criticism of a Judge's decision in a case by an attorney in that case should be confined to well-defined, well-structured and time-tested post-trial and appeal remedies readily available to the litigants. The merit of such criticism can then be decided by an appropriate neutral tribunal in a dispassionate manner. There is simply no excuse for the content, manner and place of defendant Parry's remarks at issue here. While we could not make similar observations of comments by a non-lawyer, "lawyering" must be done in a lawyer-like manner and according to the standards and rules of the profession.

Being a Judge particularly presiding on a controversial issue of great public concern is difficult enough. Where in such a proceeding calm and reason is needed to solve a vexing problem, language such as used by defendant Parry frustrates and demeans the entire process.

Lastly, it is obvious that we do not decide the truth of defendant Parry's remarks. Even here defendant Parry had an available remedy, to wit, a complaint to the Judicial Inquiry and Review Board. We are not aware of any such complaint being made in this case as we are not aware of any appeal from the plaintiff Judge's declaration of a mistrial in Commonwealth v. Bronzeill.

A libel is a maliciously written or printed publication which tends to blacken a person's reputation or expose

him to public hatred, contempt or ridicule or injure him in his business or profession. The false imputation of criminal activity or intentions would clearly damage a person's reputation or his standing in the community. See *Cosgrove Studio and Camera Shop, Inc. v. Pane*, 408 Pa. 314, 132 A.2d 751 (1962).

The test of a defamatory communication has been stated as follows:

> "The test is the effect the article is fairly calculated to produce, the impression it would naturally engender, in the minds of the average persons among whom it is intended to circulate. The words must be given by judges and juries the same signification that other people are likely to attribute to them." *Corabi v. Curtis Publishing Company*, supra, 441 Pa. 432 at 444.

In the case at bar, the Court is of the opinion that these statements can reasonably be interpreted to indicate that he was biased in favor of the police and against the Police Brutality Unit. Finally, it can also be interpreted as meaning that the case was fixed. While in another context, the terms "blown out" might have quite an innocent meaning, under the circumstances here present they were capable of a defamatory meaning and a jury could so find.

The defendant Parry argues that even if the statement can be found to be defamatory, an absolute privilege exists because the statements were made during the scope of his official duties as an Assistant District Attorney. The argument is presented that the District Attorney is a public official so protected and this privilege extends to his subordinates (an Assistant District Attorney in this case) when acting in his stead.

Based on this alleged privilege, Field Communications also argues from Section 612 of the Restatement of Torts that one who provides a means of publication of defamatory matter is privileged to do so if the person

making the statement is privileged. In other words, the immunity to the television station would flow from the alleged privilege of Parry.

The Court finds no merit to the above argument. Parry's statements were not so closely related to his duties as an Assistant District Attorney as to bring him within the scope of the District Attorney's privilege. While he might have been invited to appear on the television show because he was an Assistant District Attorney, the purpose was to discuss the Bowe case. This did not give him the right to say whatever he wanted to say on any other subject. Assuming arguendo that his statements and opinions concerning the Bowe case might have been within the scope of the privilege, the statements relating to Judge Braig and the other case had nothing to do with the program itself or to Parry's duties as an Assistant District Attorney.

The important element of this privilege is that the statements made must be closely related to the duties of the particular office. We do not find as a matter of law that these statements were so related. As indicated, the statements appear to be remote from that office; nor is Pennsylvania law clear that such a privilege extends to the Assistant District Attorney as opposed to the District Attorney himself. *McCormick v. Specter*, 220 Pa. Superior Ct. 19 (1971).

The defendant Field Communications also argues from Subsection (b) of Section 612 of the Restatement of Torts Second that it is entitled to a conditional privilege. That section provides that where the publication of defamatory material is published by another, it is privileged to do so if it believes reasonably that the other party publishing the material is privileged. In other words, the argument is made that if Field Communications reasonably believed that defendant Parry had a privilege (whether or not this is in fact so) then their broadcasting of the defamatory statements would be excused.

Initially, it should be noted that this particular sec-

tion from the Restatement has not been adopted as law in the Commonwealth of Pennsylvania. Further, it does not appear that the defendant Field Communications in broadcasting and rebroadcasting the show in question did so (reasonably or otherwise) on any alleged privilege existing with Parry.

Finally, a factual question exists as to whether or not Field Communications could "reasonably believe" that Parry was privileged to publish the statements in question. While the evidence is contradicted, there is an indication that, prior to the rebroadcast, notice of the defamatory nature of Parry's statement was made known to the television station. Further, there is an allegation that they failed to allow the plaintiff an opportunity to either view the program prior to rebroadcast or to deliver to him a copy of the tape. In allowing the rebroadcast, the affidavits from Field would indicate that it relied primarily on its employees' understanding of the term "blow out." We therefore find that this argument has no merit.

The argument is also raised by defendant Field Communications that it is privileged in making the communication in question under the doctrine of neutral reportage. It is alleged that it was completely neutral as to the alleged defamatory statements made by Parry in the course of the discussion. They contend that they took no position but merely broadcast verbatim the videotape recording that was made. The television station relies on the case of *Edwards v. National Audubon Society, Inc.*, 556 F.2d 112 (2d Cir. 1977).

Under Pennsylvania law, a broadcast is privileged if it is made upon a proper case, for a proper motive, in a proper manner based upon reasonable or proper cause. See *Purcell v. Westinghouse Broadcasting Co.*, 411 Pa. 167 (1963). Field Communications claims this privilege and we agree that such privilege applies here although this holding is not the principal basis for the granting of summary judgment to Field. We believe and find that a discussion of alleged police brutality was a matter of great public concern.

Although as discussed later in this Opinion we have relied principally on another ground, we also concluded that defendant Parry's remarks constituted expressions of opinion concerning the performance of official duties by a public official and are protected by an absolute Federal constitutional privilege. "Under the First Amendment, there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323.

This doctrine flows in part from the difficulty or impossibility of proving one way or another whether an opinion concerning performance in office is true or is false. It also reflects the conclusion that "an individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs." See also *Avins v. White*, 627 F.2d 637 (1980), Third Circuit; *Hotchner v. Castillo-Puche*, 551 F.2d 910, Second Circuit; *Rinaldi v. Holt* et al., 366 N. E. 2d 1299 (New York 1977).

Finally, whether a particular statement constitutes fact or opinion is a question of law. *Rinaldi*, supra, citing *Old Dominion Branch No. 496, National Association of Letter Carriers v. Austin*, 418 U.S. 264 (1974); and *Doman v. Rosner*, 246 Pa. Superior Ct. 616 (1977).

The final argument raised by the defendants is whether or not the communications are protected by an absolute Federal constitutional privilege under the First Amendment. Starting with the landmark case of *New York Times v. Sullivan*, 376 U.S. 254 (1964), the United States Supreme Court has held in a defamation action brought by a public official relating to his official conduct, the public official cannot recover unless he proves the statement was made with "actual malice." The Supeme Court extended this holding to involve actions instituted by persons who are not public officials but are "public figures" and are involved in issues in which the

public has a justified and important interest. See *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967).

Much has been written about the rationale of *New York Times*, supra, it being stated in that Opinion that the "actual malice" test is needed, otherwise it would give public servants unjustified preference over the public they serve if critics of official conduct did not have a fair equivalent of the immunity granted to the officials themselves. Also it has been stated that the "actual malice" test amounts to a conditional privilege for the media.

While the law was extended even further to include private figures as long as there was some matter involving public interest, that doctrine was repudiated in the case of *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974) when it rejected the public figure/private figure dichotomy. In that case, the Court stated that while the "actual malice" standard applied to public figures:

> "We hold that, so long as they do not impose liability without fault, the states may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injuries to a private individual."

Following the *Gertz* opinion, public figures must still prove actual malice to recover for damages for defamatory falsehoods while private figures may recover upon a showing of mere negligence.

In *Time, Inc., v. Firestone*, 424 U.S. 448 (1976), the Supreme Court held that the New York Times rule did not automatically extend to all reports or judicial proceedings when a plaintiff was not a "public figure." The Court said that Mary Alice Firestone, a prominent socialite, did not have to prove actual malice in her case against Time Magazine because in part "she did not thrust herself into the forefront of any particular public controverys." In *Gertz*, a lawyer was held not to be a public figure despite his representation in a civil suit of a defendant who was involved in a highly publicized criminal trial.

Plaintiff's position is that at the time Parry made his statement concerning Judge Braig's conduct in the Bronzeill case, the Judge was not a public figure or official for purposes of the then current controversy. The argument is made that since the Bronzeill case was still pending before Judge Braig, he was restrained by the Code of Judicial Conduct from commenting in any way on Parry's allegations or in any way defending himself.

We are not certain that the Bronzeill case was still pending before Judge Braig in September of 1979 when defendant Parry made his remarks. Our examination of the record discloses that Judge Braig declared a mistrial on March 29, 1979, and wrote an Opinion dated June 11, 1979, supporting his declaration of a mistrial. Subsequent activity in the case involves several Rule 1100 extension petitions heard and decided by other Judges and, finally, on January 4, 1980, Judge Gafni ruled that a new trial could not be had in Commonwealth v. Bronzeill because of intentional prosecutorial misconduct causing the mistrial before Judge Braig. It therefore seems to us that in September, 1979, the case was not pending before Judge Braig although that holding is not determinative of our decision in this case.

The argument is further made that in determining who is a public official the first inquiry is whether or not such a person usually enjoys significantly greater access to the channels of effective communications and hence has a more realistic opportunity to counteract false statements than a private person normally enjoys. Private persons are normally more vulnerable to injury and the state's interest in protecting them is correspondingly greater. Plaintiff argues that in effect he was in a situation worse than a private person because he had no opportunity at all to respond to the defamatory remarks that Parry made until approximately a month and a half later when he was recused in the Bronzeill case.

No authority is given for this interesting argument made by the plaintiff. We believe that perhaps a more in-

teresting argument could be made concerning an alleged defamatory remark about the conduct and behavior of a public official not related to his public official duties. We have concluded from an examination of the many cases in this area that the *New York Times* standard applies to public officials and a Judge is such a public official. It is only where one is not a public official that the inquiry begins as to whether he is a public figure. Thus, only if the plaintiff is not a public official would plaintiff's arguments as to the adoption of negligence standards in this case be persuasive. It appears that recognizing the onus and heavy burden of the *New York Times* standard, plaintiff struggles to avoid it by making various arguments why the Court should adopt negligence standards in this case.

It is clear that the "actual malice" standard applies to all those who hold governmental office. See *Gertz v. Robert Welch, Inc.*, supra. Moreover, recently it was decided in the case of *Brophy v. Philadelphia Newspapers, Inc.*, 422 A.2d 625, decided October 31, 1980, appeal to the Supreme Court denied February 3, 1981, that a police commissioner and two police officers were public officials for purposes of applying this standard. We note that the Judge who granted summary judgment in *Brophy*, supra, was the plaintiff herein. It cannot be seriously argued that the Judge, elected by the citizens of Philadelphia, is not a public official. See also *Rinaldi v. Holt, et al*, supra; *Garrison v. Louisiana*, 379 U.S. 64.

Summary judgment can only be granted if the pleadings, depositions, affidavits and other documents comprising the record papers show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See Pa. R.C.P. 1035. In reviewing the record, all well pleaded facts in the non-moving party's pleadings must be accepted as true and all reasonable inferences drawn therefrom determined in his favor. See *Brophy v. Philadelphia Newspapers, Inc.*, supra.

In the case at bar, having found that the statements in question are capable of a defamatory meaning and having further found that the plaintiff is a public official, the Court must make a threshold inquiry into whether or not from a review of the record papers as set forth above actual malice exists. As stated by our Superior Court in the case of *Curran v. Philadelphia Newspapers, Inc.*, 261 Pa. Superior Ct. 118, 395 A.2d 1342 (1978), it is not enough for the plaintiff, in resisting summary judgment, to argue that there is a jury question as to malice; he must make a showing of facts from which malice may be inferred.

See also *Brophy*, supra, for an excellent discussion of the philosophical disagreement between Judge Cavanaugh and Judge Spaeth concerning the proper test for the granting of summary judgment. We are satisfied that either under the *Curran*, supra, test or the *Brophy*, supra, test, summary judgment as requested should be granted.

With regard to the standard of proof required to establish a defamation claim against a person who has criticized a public official, the standard required is proof that the statement was made with the knowledge that it was false or with reckless disregard of whether it was false or not.

Plaintiff's averments of malice relating to the defendant Field Communications concern activities of the television station's personnel after the original broadcast of September 23, 1979, but prior to the re-broadcast on September 29, 1979. Plaintiff points to three facts, namely, that the Vice President and General Manager, Kenneth McDonald, viewed the program more than once; the tape apparently was not hand-delivered as McDonald instructed to the plaintiff but was rather mailed to him; and, third, that the program was re-broadcast in spite of plaintiff's objections. None of these facts either individually or taken together establish a genuine issue of fact as to actual malice on the part of

the defendant Field Communications. The conduct does not constitute "highly unreasonable conduct constituting an extreme departure from the standards of investigation in reporting ordinarily adhered to by responsible publishers." See *Curtis Publishing Company v. Butts*, supra.

Further rebroadcasting of the show following plaintiff's objections by telephone is not a fact from which malice can be inferred. In *Edwards v. National Audubon Society, Inc.*, supra, the Circuit Court stated that "surely liability under the 'clear and convincing proof' standard of *New York Times v. Sullivan*, supra, cannot be predicated on mere denials, however vehement; such denials are so commonplace in the world of polemical charge and countercharge that, in themselves, they hardly alert the conscientious reporter to the likelihood of error." (556 F.2d 113 at 121.)

In conclusion, we are faced with the recognition that the *New York Times* standard amounts to an erosion of a State Court's power in defamation cases by applying the "actual malice" test where public figures such as a Judge claim to be defamed. We must also recognize that summary judgment is intended to be a prophylactic rule so as to encourage free debate and free the media from defending against vexatious suits.

Accordingly, and in view of the above, we find that there is no genuine issue as to any material fact and, further, we find that as a matter of law plaintiff cannot prove actual malice against either defendant. Since we have also concluded that there is no clear and convincing evidence to persuade a Judge or a jury that there is actual malice, we entered Orders on January 9, 1981, granting to both defendants the summary relief sought.

BY THE COURT:

_____

DOMENIC D. JEROME
Judge
Specially Presiding

IN THE
COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY, PENNSYLVANIA

HONORABLE JOSEPH P. BRAIG	:	No. 3446
v.	:	
FIELD COMMUNICATIONS	:	
and		
LLOYD GEORGE PARRY	:	March Term, 1980

James E. Beasley, Attorney for Plaintiff
David H. Marion, Attorney for Field Communications
Gregory M. Harvey, Attorney for Lloyd George Parry

ORDER

AND NOW, to wit, this 9th day of January, 1981, Briefs having been submitted and Argument having been heard, whether considered by the standard of *Curran v. Philadelphia Newspapers, Inc.*, 261 Pa. Superior Ct. 118 (unless the *Court* finds the plaintiff can prove actual malice — summary judgment is the preferred procedure), or *Brophy v. Philadelphia Newspapers, Inc.*, slip Opinion, Pa. Superior Ct. 2915, October 31, 1980, (Unless there appears a genuine issue of fact from which a *Jury* could reasonably find actual malice — viewing the evidence and all inferences arising therefrom in the light most favorable to the non-moving party) (Emphasis mine), Summary Judgment is granted in favor of Field Communications and against the plaintiff the Honorable Joseph P. Braig.

BY THE COURT:

DOMENIC D. JEROME
Judge
Specially Presiding

IN THE
COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY, PENNSYLVANIA

HONORABLE JOSEPH P. BRAIG	:	No. 3446
v.	:	
FIELD COMMUNICATIONS	:	
and		
LLOYD GEORGE PARRY	:	March Term, 1980

James E. Beasley, Attorney for Plaintiff
David H. Marion, Attorney for Field Communications
Gregory M. Harvey, Attorney for Lloyd George Parry

ORDER

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BY THE COURT:

_____

DOMENIC D. JEROME
Judge
Specially Presiding

HONORABLE JOSEPH P. BRAIG, *Appellant*	)	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	)	PHILADELPHIA
FIELD COMMUNICATIONS and LLOYD GEORGE PARRY	)	No. 278 PHILADELPHIA, 1981

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the above captioned matter, of the Court of Common Pleas of PHILADELPHIA County be, and is REVERSED AND REMANDED TO THE JURISDICTION OF THE LOWER COURT WITH DIRECTIVES. JURISDICTION IS RELINQUISHED.

By the Court:

J. Haniel Henry
Prothonotary

Dated: January 14, 1983

IN THE
SUPERIOR COURT OF PENNSYLVANIA

Honorable Joseph P. Braig, *Appellant*	:	PHILADELPHIA DISTRICT
v.	:	(C.P.-Phila. County-Civil Action at No. 3446 March Term, 1980)
Field Communications and Lloyd George Parry	:	No. 278 Philadelphia, 1981

ORDER OF COURT

AND NOW, this 29th day of March, 1983 the application of appellees, Field Communications and Lloyd George Parry, for reargument is denied.

Per Curiam

Supreme Court of Pennsylvania

MARLENE F. LACHMAN, Esq.
PROTHONOTARY
PATRICK TASSOS
DEPUTY PROTHONOTARY

Eastern District

408 CITY HALL
PHILADELPHIA, PA 19107
(215) 496-4500

June 29, 1983

David H. Marion, Esq.
1214 – IVB Bldg.
1700 Market Street
Phila., Pa. 19103

RE: Hon. Joseph P. Braig, Respondent, v.
Field Communications, Petitioner, et al.
No. 240 E. D. ALLOC. DKT. 1983

Dear Mr. Marion:

This is to advise you that on June 24, 1983 the Supreme Court entered its Order denying the Petition for Allowance of Appeal in the above-captioned matter. Mr. Justice McDermott did not participate in this case.

Very truly yours,

Patrick Tassos

Marlene Lachman, Esq.
Prothonotary

ML:jap

Patrick Tassos
Deputy Prothonotary

cc: James E. Beasley, Esq.
Gregory M. Harvey, Esq.

Supreme Court of Pennsylvania

MARLENE F. LACHMAN, Esq.
PROTHONOTARY
PATRICK TASSOS
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488 CITY HALL
PHILADELPHIA, PA 19107
(215) 686-4800

June 29, 1983

Gregory M. Harvey, Esq.
MORGAN LEWIS & BOCKIUS
2200 The Fidelity Building
Philadelphia, PA 19109

In Re: Hon. Joseph P. Braig v. Field Communications & Lloyd George Parry No. 241 E. D. Allocatur Docket, 1983

Dear Mr. Harvey:

The Court has entered the following order on your Petition for Allowance of Appeal filed in the above-captioned matter:

"Denied.
6/24/83
Per Curiam
Mr. Justice McDermott did not participate in this matter."

Very truly yours,

Patrick Tassos
Deputy Prothonotary

PT:ml
cc: James E. Beasley, Esq.
David H. Marion, Esq.